

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss.

SUPERIOR COURT DEPARTMENT

CIVIL ACTION NO.: 2277CV01134 (A)

JEFFREY T. WORTHLEY,

Plaintiff,

v.

SCHOOL COMMITTEE OF
GLOUCESTER; and BEN LUMMIS, in
his official and personal capacities,

Defendants.

**MEMORANDUM IN SUPPORT OF
EMERGENCY *EX PARTE* MOTION FOR
TEMPORARY RESTRAINING ORDER
AND MOTION FOR A PRELIMINARY
INJUNCTION**

MEMORANDUM OF POINTS AND AUTHORITIES

1.0 INTRODUCTION

Plaintiff is an elected official, dedicated to community service, who discussed a volunteer program with a constituent who happens to be a high school student. Defendants, for some purpose, chose to knowingly and willfully mischaracterize the encounter as something nefarious. Defendants unfairly maligned Plaintiff and barred him from entering a school premises or attending school sponsored events. This Court should restrain and enjoin Defendants from the issuance and enforcement of their unconstitutional No Trespass Order. Due to the immediate repercussions of the unconstitutional order, an emergency, *ex parte* restraining order is required, to be followed by a preliminary injunction upon notice.

2.0 FACTUAL BACKGROUND

On November 8, 2022, Worthley went to Gloucester High School to vote, as this is his polling station. Compl. at ¶ 8. Although school was not in session, the Gloucester High School

student government set up a table for a bake sale adjacent to the line to enter the polls. *Id.* at ¶ 9. He was one of approximately 15-20 voters in proximity to the bake sale at the time. *Id.*

Worthley introduced himself to the students manning the bake sale and commended them for their efforts. *Id.* at ¶10. One student identified herself as a student government leader. *Id.* As this individual is a minor, she is identified pseudonymously as “█”.

Worthley informed █ that he would purchase some baked goods after he voted. *Id.* at ¶ 11. █ said there may be none left as not many people had followed through providing baked goods. *Id.* Were there no baked goods left, Worthley indicated he would have made a donation. *Id.*

Worthley, as a public servant and civic-minded individual, related his own experiences in student government at the same high school and shared ideas about how to increase civic engagement and fundraising. *Id.* at ¶ 12. █ appeared interested in hearing the suggestions. *Id.* █ expressed disappointment that she was unable to generate involvement from classmates and stated that she was beginning to survey students on the best ways to reach them. *Id.* at ¶ 13. Worthley responded that handwritten notes from the Drama Club inviting the City Councilors to performances was impactful. *Id.* █ proceeded to offer Worthley the phone number of her friend in the Drama Club, who wrote the notes, so that he could thank her himself, but Worthley declined to receive the phone number without the constituent’s consent. *Id.* Worthley also declined █’s request that she give his number to her friend. *Id.*

After voting, Worthley mentioned that the City Council President was interested in reinstituting “student government day” and █ expressed keen interest in that idea. *Id.* at ¶ 14. Worthley had been attempting to reach Defendant Lummis since January 2022 about inspiring

volunteerism, but Defendant Lummis never responded. *Id.* at ¶ 15. Worthley further explained to ■■■ that he had worked on a volunteer project to clean up a local field, and that he plans to create a volunteer corps in Gloucester (“Gloucester Volunteer Corps”) that is similar to the Peace Corps. *Id.* Worthley further shared that he has approximately 50 Gloucester citizens already involved with his volunteer initiative and that he was able to generate sufficient interest to inspire 84 volunteers to help with a downtown clean-up event. *Id.*

Apparently eager to network with similarly civic-minded leaders, ■■■ expressed interest in the project and asked Worthley for his phone number. *Id.* Worthley’s number was easily accessible through his public Facebook page, the City’s website, and his City of Gloucester business cards. *Id.* at ¶ 16. As such, Worthley gave her his number in lieu of her bothering to find it online in seconds. *Id.* ■■■ immediately dialed Worthley’s number and said “now you have my number too.” *Id.* at ¶ 17-18.

After returning to his car, Worthley saw that ■■■’s number auto-identified as ■■■’s mother. *Id.* at ¶ 19. Worthley is Facebook friends with ■■■’s mother. *Id.* at ¶ 20. About 15 minutes after ■■■ called Worthley’s phone, Worthley sent ■■■ a text message about volunteering and the importance of inspiring the next generation. *Id.* at ¶ 22. Worthley was establishing a point of contact for the Gloucester Volunteer Corps within Gloucester High School. *Id.* at ¶ 23. This was a great breakthrough since Defendant Lummis had never responded. *Id.* at ¶ 15.

■■■ responded later that evening around 9:30pm politely stating that she could not get involved with Worthley’s volunteer initiatives at this time but perhaps in the future. *Id.* at ¶ 24. Worthley replied, assuaging ■■■’s concerns about the late time of the text, noting that he would either be up late or his phone would be on silent—either way, the time she responded was of little

concern. *Id.* at ¶ 25. Regarding the Gloucester Volunteer Corps, Worthley indicated that he “wouldn’t need [REDACTED] to dedicate any time to this movement at this point and that he wanted to consult “periodically” based on “what [her] schedule would allow.” Worthley indicated that he was looking for data and how to best communicate with other student leaders. *Id.* Worthley further stated that he “completely understand[s]” if [REDACTED] does not have the time and that he would pursue Gloucester Volunteer Corps “through class advisors.” *Id.*

The following morning, Worthley received a call from [REDACTED]’s father who explained that [REDACTED] was over-extended in her volunteer activities and that she was unavailable to participate in outreach programs. *Id.* at ¶ 27. Worthley accepted [REDACTED]’s father’s declination to participate on behalf of his daughter and told him that he would delete her number from his phone. *Id.* at ¶ 28. Worthley then summarized the discussion in a text message to [REDACTED]’s father. *Id.*

On November 14, 2022, Worthley received a phone call from Gloucester General Counsel Suzanne Egan who insisted that Worthley come in for a meeting that afternoon. *Id.* at ¶ 29. Worthley assumed that Egan was calling with respect to legislative work. *Id.* Instead, when he arrived for the meeting, Egan was present with Human Resources Director Holly Dougwillo and Police Chief Ed Conley. *Id.*

Egan informed Worthley that the meeting was in reference to “inappropriate communications with a female minor student.” *Id.* at ¶ 30. During the meeting, Worthley provided and read the text messages between [REDACTED] and himself. *Id.* at ¶ 32. Chief Conley explicitly advised Worthley that no crime had been committed and that he was no under investigation for a crime. *Id.* at ¶ 33. Nonetheless, Egan ambushed Worthley with a no trespass letter that was purportedly from Defendant Lummis, although it was unsigned. *Id.* at ¶ 34. Egan stated that Worthley’s

communications with [REDACTED] were “inappropriate” and that while his constituent communications with [REDACTED] had violated neither a law nor any other rule, Worthley was banned from coming on Gloucester High School campus for the remainder of the school year. *Id.*

In response to Worthley inquiring how a no trespass order could issue without an investigation, Chief Conley responded that Worthley “may feel as though [his] due process rights have been violated, and I would likely agree with [him], but that this is a much better result than the alternative.” *Id.* at ¶ 36. This “alternative” to a no trespass order was never discussed. *Id.* at ¶ 37. Worthley was further told at this meeting that the matter was “private” and would not be disclosed to third parties. *Id.* at ¶ 39. Egan said that the letter would not be sent by official means, because she wanted to keep it off city servers or out of city files, because then it would be a public record. *Id.* at ¶ 40.

Later that evening, Worthley emailed Egan requesting clarification about the no trespass letter. *Id.* at ¶ 41. Egan responded a version of the no trespass letter signed by Defendant Lummis (“No Trespass Order”), dated November 14, 2022. *Id.* at ¶41-42. The No Trespass Order prohibits Worthley from entering the Gloucester High School grounds or attending any school sponsored events until the end of the 2022-2023 school year based on the allegation that Worthley’s discussions with [REDACTED] “poses a threat to the safety of the Gloucester High School community.” *Id.* at ¶¶ 42-44.

It is commonplace and expected that local politicians attend events at Gloucester High School. *Id.* at ¶ 46. As a member of the City Council, it is necessary for Worthley to have a working relationship with Gloucester Public Schools and to have the freedom to attend school sponsored events and activities. *Id.* at ¶ 53. There is a strong tradition in Gloucester for elected officials to

attend events at the schools, and to engage constituents, even those not yet of voting age, in community events and volunteer programs. *Id.* at ¶ 54.

Worthley called Egan to request readily-refuted factual errors to be corrected in the No Trespass Order and to speak to Defendant Lummis regarding the matter. *Id.* at ¶ 45. Despite Worthley informing Egan that he would be unable to attend graduation day or watch his son play Taps on the coming Memorial Day, Egan told Worthley that Defendant Lummis refused to meet with him. *Id.* ¶¶ 45, 47.

In an article published on November 22, 2022, Lummis issued a public statement to the Gloucester Daily Times regarding the matter, where he provided just enough information to call Worthley's character into question, but without enough information to let the public know the truth. *Id.* at ¶ 48. Even in spite of his coy public statement, Lummis expressly stated that “no student was ever in danger[.]” Compl. at Exhibit E.

Soon after the publication, on November 23, 2022, Worthley was notified that he is on paid leave from playing the organ for his church. Worthley's son plays music with him during church and will not be able to as well. And, the Gloucester City Council may take some action on account of the mere existence of the unconstitutional order.² Thus, Defendants' scurrilous actions are even impacting Worthley's ability to participate in his daily life.

² See Forman, Ethan, “*Worthley Files Lawsuit Regarding GHS No-Trespass Order*”, GLOUCESTER DAILY TIMES (Nov. 24, 2022) available at <https://www.gloucestertimes.com/news/worthley-files-lawsuit-regarding-ghs-no-trespass-order/article_7fddf1cc-6b84-11ed-bb67-376f6667b077.html>

3.0 LEGAL STANDARDS

“The standards used to consider a request for a temporary restraining order is the same as that used for a preliminary injunction.” *G6 Hosp. Prop., LLC v. Town of Braintree Bd. of Health*, 34 Mass. L. Rep. 325 (2017) (citing *Quincy Cablesystems, Inc. v. Sully's Bar, Inc.*, 640 F.Sup. 1159, 1160 (D.Mass. 1986)). In order to succeed on a motion for a preliminary injunction, the movant must show (1) a likelihood of success on the merits; (2) that they will suffer irreparable harm in the absence of injunctive relief, and (3) that the balance of irreparable harm weighs in their favor. See *Tri-Nel Management, Inc. v. Board of Health*, 433 Mass. 217, 219 (.2001) (citing *Packaging Indus. Group, Inc. v. Cheney*, 380 Mass. 609, 616 (1980)). “When, as here, a party seeks to enjoin governmental action, the court also considers whether the relief sought will adversely affect the public.” *Id.* (citations omitted).

“In the First Amendment context, the likelihood of success on the merits is the linchpin of the preliminary injunction analysis.” *Sindicato Puertorriqueño De Trabajadores v. Fortuño*, 699 F.3d 1, 10 (1st Cir. 2012) (per curiam). At this stage, the “court need not conclusively determine the merits of the movant’s claim; it is enough for the court simply to evaluate the likelihood . . . the movant ultimately will prevail on the merits.” *Ryan v. U.S. Immigration & Customs Enft*, 974 F.3d 9, 18 (1st Cir. 2020); accord *Cote-Whitacre v. Dep’t of Pub. Health*, 18 Mass. L. Rep. 190 (2004) (observing that where there is a likelihood of success on a First Amendment claim, no further showing of irreparable harm is required). See also, Wright & Miller, 11 Federal Practice & Procedure, § 2948 (When an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary”).

4.0 LEGAL ARGUMENT

4.1 Plaintiff is likely to Prevail on the Merits of His Claim

Plaintiff's constitutional rights were violated by Defendants' actions, specifically issuing a No Trespass Order and threatening to enforce it against Plaintiff for his conduct protected under the First Amendment. Worthley is deprived from attending community events, attending events with his children, and engaging with his constituents as an elected official without due process.

4.1.1 Free Speech Claim

Defendants violated Worthley's freedom of speech in issuing the No Trespass Order and its enforcement presents a further infringement of that right. "The First Amendment, applicable to the States through the Fourteenth Amendment, prohibits the enactment of laws abridging the freedom of speech." *Mass. Coal. for the Homeless v. City of Fall River*, 486 Mass. 437, 440 (Mass. 2020) (quoting *Reed v. Gilbert*, 576 U.S. 155, 163 (2015)) (quotation marks omitted). "Article 16 of our Declaration of Rights provides analogous protections, and in some instances, provides more protection for expressive activity than the First Amendment." *Id.* (citation omitted). In seeking a preliminary injunction, the plaintiff has the burden to show the state action infringes on their First Amendment rights, at which point the state must then justify its actions. *Comcast of Maine/New Hampshire, Inc. v. Mills*, 435 F. Supp. 228, 233 (D. Me. 2019) (citing *Reilly v. City of Harrisburg*, 858 F.3d 173, 180 (3d Cir. 2017)).

Engaging future civic leaders regarding actual or potential civic projects is protected speech. "It is beyond question that soliciting contributions is expressive activity that is protected by the First Amendment." *Benefit v. City of Cambridge*, 424 Mass. 918, 922 (1997). While Plaintiff was not asking for donations, he was discussing volunteer activities with a constituent

and his plan to set up a Gloucester Volunteer Corps that parallels the Peace Corps. Thus, his discussion with ■■■ was protected speech. And, by issuing and enforcing the No Trespass Order, Plaintiff cannot advance civic projects among some of the most civic-minded members of the community.

In any First Amendment claim based on a government restriction on speech, the first question is what level of scrutiny the government must satisfy. This ranges from strict scrutiny, which is the most difficult to satisfy, to rational basis review, which is the most deferential. Defendants' actions constitute a content-based restriction on speech and cannot survive strict scrutiny.

4.1.1.1 Defendants' Conduct is Subject to Strict Scrutiny

A regulation is content-based if it “applies to particular speech because of the topic discussed or the idea or message expressed.” *Reed v. Town of Gilbert*, 576 U.S. 155, 155 (2015) (finding that regulation which specified “political signs” and “ideological signs” was content-based). In deciding whether a restriction is content-based, a court must “consider whether a regulation of speech ‘on its face’ draws distinctions based on the message a speaker conveys.” *Id.* Some such restrictions are obvious, while “others are more subtle, defining regulated speech by its function or purpose.” *Id.* Even facially content-neutral regulations will be considered content-based if they cannot be “justified without reference to the content of the regulated speech.” *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989). To survive strict scrutiny analysis, a restriction on speech must “prove that the restriction furthers a compelling interest and is narrowly tailored to achieve that interest.” *Arizona Free Enterprise Club’s Freedom Club PAC v. Bennett*, 564 U.S. 721, 734 (2011).

Worthley has a First Amendment right to engage in conversation with his constituents. In the No Trespass Order, Defendant Lummis described the content of the discussion between Worthley and a constituent. Compl. at Exhibit D. Lummis mischaracterized the conversation in various parts. But, he correctly notes that the subject-matter of the conversation was volunteerism and fundraising. Defendants retaliated against Worthley by issuing a No Trespass Order due to the content and viewpoint of his speech. Defendants provide no legal, administrative, or school rule that Worthley has allegedly violated. Accordingly, Defendants' actions are subject to strict scrutiny, which they cannot satisfy.

4.1.2 Defendants' Conduct Cannot Survive Strict Scrutiny

There is no compelling interest served by issuing and enforcing a No Trespass Order against Worthley. Worthley plans to create a volunteer corps in Gloucester, akin to a local version of the Peace Corps. By necessity, Worthley must engage constituents to accomplish this endeavor and that includes constituents from all age groups. Any improper motives that Defendant Lummis falsely imputed to Worthley are a reflection of Lummis's inner mind, motives, and intentions and have nothing to do with Worthley's actual statements. Defendant Lummis purports that communication between a city council member and his constituent who happens to be a high school student "poses a threat to the safety of the Gloucester High School Community." Compl. at Exhibit D. While Defendant Lummis does not state what kind of threat or how there is a threat, it is clear from the substance of his letter that he was vehemently intolerant of Worthley conversing with ■■■ (despite having the opportunity to review the text messages), and the viewpoints Worthley expressed. Compl. At ¶ 41.

After falsely stating that Worthley posed a threat, Defendant Lummis issued a press release contradicting himself by stating that “no student was ever in danger.” Compl. at Exhibit E. This is typically true – civic engagement is not a dangerous activity. However, Worthley’s Gloucester Volunteer Corps is a subject-matter that Defendant Lummis will apparently not tolerate from Worthley, a city council member. Defendant Lummis will not permit Worthley to discuss volunteering with high school students, nor will he accept Worthley’s phone calls to discuss volunteering. *See* Compl. at ¶ 15. There is no compelling interest served by the arbitrary and irrational actions taken by Defendant Lummis in banning a city council member from engaging his constituents about volunteering.

Neither is the No Trespass Order narrowly tailored. Barring Worthley from entering high school grounds—whether to watch his son play Taps on Memorial Day, attend graduation and other events that City Councilors typically attend, go to a football game or play, or any of the other myriad reasons a Gloucester citizen and City Councilor might have to be on high school grounds—is not tailored to Lummis’s purported concern. Restricting him from speaking with particular students or on particular subjects (while likely itself unconstitutional) is far more narrowly tailored to achieve Lummis’s improper goals than a blanket ban on entering school grounds. Thus, the No Trespass Order fails strict scrutiny.

4.1.3 The Government’s Actions are a Prior Restraint

There are few things more offensive to our Constitution than a prior restraint. “Prior restraints on speech and publication are the most serious and the least tolerable infringement on First Amendment rights.” *Neb. Press Ass’n v. Stuart*, 427 U.S. 530, 559 (1976). “The Supreme Court has roundly rejected prior restraint.” *Kinney v. Barnes*, 443 S.W.3d 87, 91 n.7 (Tex. 2014)

(citing Sobchak, W., *The Big Lebowski*, 1998)). Prior restraints “bear a heavy presumption against [their] constitutional validity.” *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 70 (1963). “[P]rior restraints require an unusually heavy justification under the First Amendment.” *Commonwealth v. Barnes*, 461 Mass. 644, 652 (2012) (quotation marks omitted). There is a “heavy presumption” against their constitutional validity. *In re Providence Journal Co.*, 820 F.2d 1342, 1348 (1st Cir. 1986).

Defendants’ decision to bar Worthley from Gloucester High School is based on the content and viewpoint of his speech. Worthley is prohibited from attending community events like high school football games to cheer on the team and engage with citizens or attending events with his children. Further, Worthley cannot conduct outreach on school grounds or at school events as an elected official. Worthley discussed volunteer projects and increasing engagement for volunteering with a constituent who happens to be a high school student. Notably, Gloucester High School ordinarily encourages its students to be civically engaged—graduating seniors who participate in civic or community service (necessarily under the supervision of leaders like Worthley) can be granted the Gloucester Pride Stride Lynne “Lani” Vachon Memorial Award, the Gloucester Pride Stride Scholarship Award, or the Charlie Thomas Memorial Scholarship.³

Defendant Lummis presumably banned Worthley from school campus and school sponsored activities so that he cannot further engage his constituents in the constitutionally protected expressive activity of discussing volunteering. Worthley was neither threatening nor abusive. Worthley, an elected official, aims to reinspire and invigorate volunteerism in the

³ See “*Gloucester High School Graduation Awards 2020*”, GLOUCESTER DAILY TIMES (Aug. 16, 2020) available at < https://www.gloucestertimes.com/news/local_news/gloucester-high-school-graduation-awards-2020/article_8853e15d-ede8-5158-ab0d-0beeb6b145bb.html>

Gloucester community. This prior restraint lacks any justification and must be struck down.

4.1.4 Defendants Denied Worthley Due Process

The constitutional guarantee of due process requires that laws give individuals reasonable notice of prohibited conduct. Procedural due process is protected by the Fourteenth Amendment to the United States Constitution, which reads, in relevant part: “No state shall . . . deprive any person of life, liberty, or property, without due process of law. . . .” Procedural due process is also protected under the Massachusetts Constitution. “Part II, c. 1, § 1, art. 4, of the Massachusetts Constitution, and arts. 1, 10 and 12 of its Declaration of Rights, are the provisions in our Constitution comparable to the due process clause of the Federal Constitution.” *Duarte v. Commissioner of Revenue*, 451 Mass. 399, 412 n.20 (2008) (quoting *Pinnick v. Cleary*, 360 Mass. 1, 14 n.8 (1971)). “The fundamental requirement of due process is notice and the opportunity to be heard at a meaningful time and in a meaningful manner.” *Id.* at 412 (quotation marks and citation omitted).

"[T]he specific dictates of due process generally require[] consideration of three distinct factors: First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedure used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). *See Aime v. Commonwealth*, 414 Mass. 667, 675 (1993) ("the individual interest at stake must be balanced against the nature of the governmental interest and the risk of an erroneous deprivation of liberty or property under the procedures which the State seeks to use").

Defendants' conduct here, barring Worthley from Gloucester High School grounds and attending school sponsored events is arbitrary and capricious. Defendant Lummis provided no legal basis for the No Trespass Order. There was no notice of any proceeding regarding the consideration of whether to issue the order. Defendants provided no opportunity for Worthley to be heard to contest the potential issuance of the No Trespass Order or appeal such determination. Defendants proffered no administrative, school, nor any other rule that Worthley allegedly violated. Any purported basis for the No Trespass Order stems Plaintiff's constitutionally-protected speech. Compl. at ¶¶ 8-27. Gloucester High School was not in session during that time. Worthley was not attending a school sponsored event or activity. There is no rational basis between the No Trespass Order and Plaintiff's speech. Chief Conley, aware of the situation, empathized with Worthley and admitted, on behalf of Defendants, that there is no due process here. Compl. at ¶¶ 36, 38. Even without this confession, there was no due process afforded Worthley. The No Trespass Order, therefore, is unconstitutional.

4.2 Plaintiff Will Suffer Irreparable Injury Without an Injunction

The "loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976). When a plaintiff seeks injunctive relief for "an alleged violation of First Amendment rights, a plaintiff's irreparable harm is inseparably linked to the likelihood of success on the merits of plaintiff's First Amendment claim." *WV Assn'n of Club Owners and Fraternal Svcs., Inc. v. Musgrave*, 553 F.3d 292, 298 (4th Cir. 2009). Thus, if the plaintiff demonstrates a likelihood of success on the merits of its First Amendment claim, they necessarily also establish irreparable harm. *Fortuño*, 699 F.3d at 15.

The extent of damage to Worthley’s reputation and loss of business opportunities will continue to grow until Defendants are enjoined. Worthley has been put on paid leave from playing the organ at his church and cannot enjoy playing music with his son at church, and the City Council is convening as a result of the unconstitutional order.. Worthley will miss his son playing Taps on Memorial Day and will miss other future events if the Defendants are not enjoined. *See* Compl. at ¶¶ 45, 47.

Further, as an elected official, he is expected to show up to events and this will harm his chances for reelection in the future. *Mancuso v. Taft*, 476 F.2d 187, 195 (1st Cir. 1973) (“We now inquire whether the interest of the individual in running for public office is an interest protected by the First Amendment, so that any law which significantly infringes that interest must be given strict review. The Supreme Court has never directly decided this point. However, *Williams v. Rhodes*, [393 U.S. 23 (1968)], strongly suggests that the activity of seeking public office is among those protected by the First Amendment.”); *see also Magill v. Lynch*, 560 F.2d 22, 29 (1st Cir. 1977) (“Candidacy is a First Amendment freedom.”).

It is commonplace and expected that local politicians attend events at Gloucester High School. *Id.* at ¶ 46. As a member of the City Council, it is necessary for Worthley to have a working relationship with Gloucester Public Schools and to have the freedom to attend school sponsored events and activities. *Id.* at ¶ 53. There is a strong tradition in Gloucester for elected officials to attend events at the schools, and to engage constituents, even those not yet of voting age, in community events and volunteer programs. *Id.* at ¶ 54. Until Defendants are enjoined, Worthley’s First Amendment interest as a Gloucester citizen and elected official are harmed.

4.3 The Balance of Irreparable Harm Weights in Plaintiff's Favor

When a government regulation restricts First Amendment-protected speech, the balance of hardships tends to weigh heavily in a plaintiff's favor. *See Firecross Ministries v. Municipality of Ponce*, 204 F. Supp. 2d 244, 251 (D.P.R. 2002) (holding that "insofar as hardship goes, the balance weighs heavily against Defendants, since they have effectively silenced Plaintiffs' constitutionally protected speech"). There is no harm to the Defendants. Worthley had innocuous conversations with a constituent. There is no rational basis for the response by Defendant Lummis, and his refusal to speak with Worthley is inexplicable.

4.4 Injunctive Relief is in the Public Interest

Finally, injunctive relief is in the public interest. Generally, the public interest "favors protecting First Amendment rights." *Kelly v. City of Parkersburg*, 978 F. Supp. 2d 624, (S.D. W.V. 2013); *see also Carey v. FEC*, 791 F. Supp. 2d 121, 135-36 (D. D.C. 2011); *Mullin v. Sussex Cnty., Del.*, 861 F. Supp. 2d 411, 428 (D. Del. 2012). The public interest is served by issuing an injunction where "failure to issue the injunction would harm the public's interest in protecting First Amendment rights in order to allow the free flow of ideas." *Magriz v. union do Tronquistas de Puerto Rico, Local 901*, 765 F. Supp. 2d 143, 157 (D.P.R. 2011) (citing *United Food & Commer. Workers Union, Local 1099 v. Sw. Ohio Reg'l Transit Auth.*, 163 F.3d 341, 363 (6th Cir. 1998)). Moreover, the unconstitutional government action by Defendants in this case has the potential to harm nonparties to the case because it will limit or infringe upon the rights granted to them by the First Amendment of the United States Constitution and art. 16 of the Massachusetts Declaration of Rights, as amended by art. 77 of the Amendments to the Massachusetts Constitution. *See Wolfe Fin. Inc. v. Rodgers*, 2018 U.S. Dist. LEXIS 64335, at *49 (M.D. N.C. April 17, 2018) (citing

McCarthy v. Fuller, 810 F.3d 456, 461 (7th Cir. 2015). Moreover, as Defendant Lummis stated in his statement to the Gloucester Daily Times, “no student was ever in danger.” See Compl. at Exhibit E.

4.5 At Most, a Minimal Bond Should Be Required

Rule 65 of the Massachusetts Rules of Civil Procedures provides that a court cannot enter injunctive relief unless the moving party gives security “as the court deems proper, for payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained.” Mass. R. Civ. P. 65(c). A bond should only be required if the enjoined party will suffer any harm from the issuance of the injunction. See *Scotts Co. v. United Indus. Corp.*, 315 F.3d 264, 285 (4th Cir. 2002); see also *VanLeeuwen v. Farm Credit Admin.*, 577 F. Supp. 264, 279 (D. Or. 1983) (“A bond is not required if there is no likelihood of harm to the restrained party.”) (collecting cases).⁴

Defendants will suffer no damages if the Court issues the requested injunction, which will simply allow Worthley to enter Gloucester Public High School and attend school sponsored events. All that the relief requested will do is repair the *status quo* and allow Worthley to exercise his constitutional rights. For this reason, Worthley request that the injunction issue with no bond required. If a bond is required, Worthley requests that it be a token of \$1.

⁴ “The Massachusetts Rules of Civil Procedure are construed in conformity with the Federal Rules of Civil Procedure absent compelling reasons to the contrary.” *Dinsdale v. Commonwealth*, 39 Mass. App. Ct. 926, 928 n.3 (1995) (citing *Rollins Environmental Services, Inc. v. Superior Court*, 368 Mass. 174, 179-180 (1975)).

5.0 CONCLUSION

The Court should enter an *ex parte* temporary restraining order and preliminary injunction against the Defendants precluding them from issuing and enforcing a no trespass order against Worthley that prevents him from entering the premises of the Gloucester High School and attending school sponsored events.

Dated: November 25, 2022

Respectfully Submitted,

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